

WEST TISBURY ZONING BOARD OF APPEALS
Minutes for Thursday, December 16, 2021 meeting
Online meeting via ZOOM- @ 5:00 PM

Approved on January 13, 2022

Present: Larry Schubert, Deborah Wells, John Rau and Casey Decker, Julius Lowe, Andy Zaikis and Jeffrey Kaye

Absent: N/A

Also Present: Pam Thors, Bd. Administrator, James O'Donnell, Leslie Baker and David Gorenberg, Barry Richmond, Joy Robinson-Lynch, Ned Robinson-Lynch, Ryan Burgdorfer and Kimberly Revak.

5:00 pm –

The minutes of the meeting on November 18th were reviewed and approved with corrections, with two abstentions: Jeffrey Kaye and Julius Lowe.

The minutes of the meeting on December 2nd were approved as written, with three abstentions: Julius Lowe, Andy Zaikis and Jeffrey Kaye.

The 2023 Budget was reviewed and approved. All line items will be level funded.

John asked about the status of the Larkosh lawsuit. Pam said she will prepare an update on the case for the board to review at the next meeting.

Larry asked about the \$200.00 fees and whether they cover advertising expenses. Pam said that they don't. Larry asked if the ZBA has the authority to raise the fees or not. Casey suggested that the fee to apply be raised. He said there is a big push in the building community to have Towns raise fees so that better service can be provided.

Pam said she would look into the authority of the board to raise the application fee and also the amounts charged by other towns.

John Rau asked about the power of the ZBA to act on the Centerline Communications application for Special Permit. Larry said that, according to Town Counsel, if the board denied the application, they would find themselves in Federal Court. He said that under Section 6409, the Town must approve the application but can render conditions on the approval.

5:15 pm – A public hearing on an Application for a Special Permit from James O'Donnell to operate a Service Business, (Electrician) under Section 8.5-2 of the Zoning Bylaws at 664 Old County Rd., Assessor's Map 26, Lot 29 RU District.

Larry read the Notice and the Narrative, (see file). It was noted that the applicant has two vans and one private vehicle; all under 10,000 lbs. Gross Vehicle Weight, (GVW). He added that he keeps the vans and materials at this location but that his business office, where he meets with clients is in Oak Bluffs.

The site plan was reviewed and discussed. It was noted that the length of the driveway from Old County Rd. is 1,900 feet and that it services three lots. It was confirmed that James lives in the apartment over the garage and that none of the proposed structures shown on the site plan are part of this application.

The following correspondence was reviewed;

Planning Board letter referring application back to the ZBA

Building Inspector letter to applicant

Letter from Barry Richmond, abutter

Larry clarified that the Special Permit, if approved would not run with the property, meaning that subsequent owners would have to reapply for any business they wished to operate on the property.

Barry Richmond, an abutter, stated that the driveway is owned by the applicant and maintenance is shared by the two of them.

Larry asked about the time of day the business activity would take place. James stated that the number of trips per day varies but that on a busy day, they may have 10 trips in and out between the two vans.

Jeffrey asked why the material and vehicle storage cannot take place at the applicant's office location in Oak Bluffs. James stated that there is no such storage space available at this location.

Deborah asked what the hours of operation are. James said that they are Monday-Friday between the hours of 9 and 5.

Andy asked if the driveway is shared. James said that he owns the entire length of the driveway. Andy went on to ask if the other two adjacent lots sold, whether there would be 3-4 more vehicles using it. James said that there would be.

James stated that the beginning section was rough but that he and Mr. Richmond, who owns the two lots between the subject lot and Old County Rd., shared the cost to improve it. He said he would be happy to continue to maintain it but that if three or four houses go in, the expense of maintaining the road would be a lot for him.

Andy asked Barry Richmond if there is anything James could do to lessen his concerns. Barry replied that if James were granted the Special Permit, that he would like to see him maintain the entire driveway until such time as another lot was built upon. Andy asked if James could live with that. James said that he could. Barry went on to say that he would prefer that there be no business there.

Jeffrey asked James if there would be evening hours of operation. James said that the schedule is mostly 8am-6pm.

Larry asked if there was more public comment.

Joy Robinson-Lynch said that Barry is correct in his statement that the property is set far back from Old County Rd. but not from Elias Lane. She voiced her support for the horses and barn there but stated that the business would be a big change for the neighborhood.

The abutters map was reviewed.

Barry Richmond pointed out the three lots that he owns, mentioning that the lot directly adjacent to the O'Donnell property would be most impacted by business activity.

Larry stated that the business seems to meet the requirements of bylaw section 8.5-2. He suggested plantings that might screen some of the driveway activity.

James said he had left a buffer of woods along most edges of the property. He said he also planted screening to improve the property in certain areas. He said he has tried to keep it as classy and clean as possible. He said that if anyone has issues with his parking areas that he would be happy to work on more screening, adding that he is open to these requests from his neighbors. He said the company that he runs will always be small but that he understands the concerns of his neighbors.

Pam asked what the size of the business vehicles are. James said that the 2 vans and 1 personal vehicle he uses for business are all about the size of a Suburban and under 10,000 lbs. GVW.

Andy asked if this permit was to be granted, would there be a limit on the number of vehicles allowed?

The Gorenbergs spoke to the fact that they love the horses and barn on the property and love the agricultural aspect of the area. They stated that they do see the lights from the property through the trees. They said they have done some screening on their property but see the prospect of a business there as unsettling.

Jeffrey asked the Gorenbergs if the traffic has bothered them. Mr. Gorenberg said it depends on the location of the vehicles. He made a few negative comments on the lighting.

Julius asked the Gorenbergs if they saw screening with trees as a solution.

Mrs. Gorenberg stated that if more were added, it might make a difference.

Julius asked about area lighting such as flood lights or unshielded spotlights casting light beyond the property lines.

James said that he has only one spotlight which is about 1,000 feet from their property.

Julius asked if screening along the driveway would be helpful.

Ned Robinson-Lynch an abutter, said that they want to be good neighbors but this has been a very quiet neighborhood for the 30 years they have been there. He noted that the proposed barn is even closer to Elias Lane.

Larry suggested a site visit on January 17th at 3pm and asked James how he felt about allowing the neighbors to attend. James said he would prefer to have a site visit with the board without his neighbors being present.

A rollcall vote was taken to continue the application until January 27th, 2022 at 5:15 pm with the following resulting votes.

L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes, C. Decker-yes.

5:35 pm - A public hearing on an Application for a Special Permit from AT&T Mobility Corp. c/o Centerline Communications for amendment of Special Permit #2012-19 for collocation of new transmission equipment and adding of equipment that will not increase the height of the tower more than 20' nor the dimension of the equipment compound, under Section 9.3-3 and Section 8.8 of the Zoning Bylaws at 21 New Ln., Assessor's Map 31, Lot 48 RU District. This application is currently under review at the Martha's Vineyard Commission.

Larry read the Notice. He said that the Martha's Vineyard Commission, (MVC) has approved the application but has not done the written decision. Kimberly Revak representing the applicant said they should have it done by January 6th.

Deborah asked if this is the first actual hearing on the application. Larry said that it is and that the last discussion with the applicant was considered the "pre-application hearing".

Jeffrey asked if the ZBA has the authority to act on this application in the absence of the MVC written decision. Larry noted that the MVC voted to approve the application and turned it over to the ZBA for their review. He noted that at the last MVC hearing, the right of the applicant to apply was questioned but that since then, all the paperwork substantiating their right to apply is in the application file.

Jeffrey reiterated that in the interest of protocol, he doesn't want to do anything out of order.

Pam stated that she asked Adam Turner this same question and was told by him that in the interest of time and the 60 day deadline imposed by FCC ruling 6409, that it was fine for the West Tisbury ZBA to hear and decide on the application prior to the filing of their written decision.

Kimberly Revak presented the application by AT&T on a tower owned by American Tower Corporation. She noted the addition of an AT&T program called, "Firstnet" which aids first responders in their communication abilities during a catastrophic event. She added that the tower was designed for co-location and that AT&T would like to add a 7x14' platform, a walk-in cabinet, a diesel backup generator and their equipment on an

extension of the existing tower in the fenced in area originally constructed for the Verizon equipment. She stated that all is allowable under Section 6409 as an “Eligible Facilities Request”.

Larry noted that the original co-location was to have been beneath the Verizon equipment. He explained that with all the push back from abutters, the original tower height requested was scaled back to appease the neighbors but rendered the space below the Verizon equipment unusable for co-location. Kimberly said that the minimum and maximum restrictions are considered in this application and that increase in tree height over time is also part of the equation.

Deborah said that she thought she heard earlier that the space between the existing Verizon equipment and the proposed AT&T equipment might allow for another co-location between them but now it seems that this possibility is not evident.

Kimberly said that it depends on the size of the equipment. She offered information on the process of co-location of new equipment and the space requirements.

John asked what power the ZBA has over the decision on this application. Kimberly said that the FCC does have jurisdiction over the outcome of the decision but the town can condition the approval.

Pam read the condition imposed by the MVC, (see letter from Alex Elvin, MVC DRI Coordinator).

Deborah asked Kimberly what the current maintenance schedule is. Kimberly said that the maintenance condition of the tower approval requires them to address the maintenance every 5 years. She said that this probably needs to be adjusted to be more frequent.

Deborah asked when it was first noticed that the branches were falling. Larry said it is not the branches but the tufts that are attached to them. He noted that the tower does look like a pine tree but boards and some island organizations are very concerned about plastics and the detrimental effect they have on the environment.

Pam read the following correspondence:

- 1) Planning Board letter referring back to ZBA
- 2) Email from Harriet Bernstein regarding her concerns about 5G
- 3) Rez and Lucy Mitchell who wrote in favor of the application but in opposition to the addition of more plastic pine branches.
- 4) Ian McIsaac who wrote in opposition to the application.

Kimberly Revak left the meeting at this point but was replaced by her supervisor, Ryan Burgdorfer.

Larry said that if the MVC denied a DRI application, the Town must not allow it. Therefore, a DRI is always sent to the MVC first. They act on it and then the ZBA holds their hearing.

Jeffrey said that this is the reason he would like to see the written record.

Julius said that what appears to be within the purview of the board is the conditioning of the appearance and materials used, (or not used), on the tower. He said they could get into the minutiae of other aspects of the application, but if they don't have the authority to deny it; why take the time to deliberate. He suggested that the board look at deciding on whether it should continue to be a monopine or not.

Larry agreed, but noted that the generator still needs to be discussed. He said he does not feel that the board is obligated to accept AT&T's determination that the option for a battery operated generator is not an option “at this time”.

He reviewed the specifics on the tower height.

- 1) Existing tower is 66' to the top of the branches

2) Proposed tower height is 75' with no branches and 80' with branches.

3) The proposed increase is 9' with no branches and 14' with branches.

Samantha Look said that she had submitted a letter as a neighbor, West Tisbury resident and member of the Vineyard Conservation Society, (VCS). She said they are very concerned about plastics in the environment. She said that microplastics cannot effectively be cleaned up and the effects they have are very serious both locally and globally. She noted that PFAS in the groundwater are also a major concern.

Jeffrey asked about a bio-degradable version of the faux pine branches.

Pam read the letter from the Vineyard Conservation Society which serves to underscore the comments by Samantha Look.

The pros and cons of the monopine and monopole options were reviewed.

The board went over the generator issue and whether a diesel powered generator should be allowed or if a propane powered should be a condition of approval.

Samantha asked if it would be possible for the board to make a propane powered generator a condition of approval with the resolution that when the technology to have a battery powered generator at the site is available, that AT&T will replace it with one.

J. Lowe and C. Decker moved and seconded a motion to close the Public Hearing and open the Board Meeting.

A roll call vote was taken to grant the Special Permit with Conditions with the following resulting votes;

L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes, C. Decker-yes.

The following are conditions of approval:

1) The pole is allowed to increase in height to 76' from base to top of array.

2) The monopine branches are to be removed and disposed of in an environmentally appropriate manner.

3) The site is to be cleared of plastic debris to a radius of 200' from the tower and disposed of in an environmentally appropriate manner.

4) The generator will be propane powered and upgraded to a non-fossil fuel generator within ten years.

Larry went over the twenty-day appeal period.

Pam said she will send a copy of the decision to the applicant as soon as it has been filed with the Town Clerk.

Casey let the board know that he got a response from the Select Board regarding his Conflict of Interest inquiry. He said that he was told to disclose his conflict of interest at any hearing involving a Schofield, Barbini and Hoehn plan.

The Meeting adjourned at 7:50 pm.

Respectfully Submitted,

Pam Thors-Board Administrator